IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1087 of 2005 (M/B)

Ajendra Ajay S/o Sri D.P. Bhatt,
R/o Post Augustmuni,
District Rudraprayag. **.....Petitioner**

Versus

State of Uttaranchal,
through its Chief Secretary,
Govt. of Uttaranchal, Dehradun. **.....Respondents**

Mr. Ashok Aggarwal, Advocate for the petitioner.
Mr. U.P.S. Negi, Addl. Advocate General for the respondent.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.

RAJEEV GUPTA, C.J. (Oral)

Mr. Ashok Aggarwal, Advocate for the petitioner.

Mr. U.P.S. Negi, Addl. Advocate General for the respondent.

They are heard.

2. Petitioner Ajendra Ajay has filed this writ petition styled as 'Public Interest Litigation' for the following reliefs:

> "a. issue a writ, order or direction by way of mandamus directing to the respondent to follow the mandatory provisions of Article 164 of Constitution of India.
>
> b. issue a writ, order or direction by the way of mandamus directing to the respondent to keep a complete bar on expenditures on such nominations.
>
> c. any other relief which this Hon'ble Court may deem fit and proper at the time of deciding the present writ petition".

3. The petitioner, in substance, is seeking a direction to the respondents to follow the mandatory provision of Article 164(1-A) of the Constitution of India.

4. Article 164(1-A) of the Constitution of India reads follows:

> "164(1-A) The total number of Ministers, including he Chief Minister, in the Counsel of Ministers in a State shall not exceed fifteen per cent of the total number of members of the Legislative Assembly of that State:
>
> Provided that the number of Ministers, including the Chief Minister in a state shall not be less than twelve:
>
> Provided further that where the total number of Ministers including the Chief Minister in the Council of Ministers in any State at the commencement of the Constitution (Ninety-first Amendment) Act, 2003 exceeds the said fifteen per cent, or the numbers specified in the first proviso, as the case may be, then the total member of Ministers in that State shall be brought in conformity with the provisions of this clause within six months from such date as the President may by public notification appoint."

5. From the above-quoted Article 164(1-A) of the Constitution of India, it is apparent that what was sought to be restricted by introducing Article 164(1-A) in the Constitution of India [vide amendment inserted by the Constitution (Ninety-first Amendment) Act, 2003, w.e.f. 01.01.2004] is the number of the Ministers in a State.

6. The respondent, in the counter affidavit, has categorically stated that the number of the Ministers in the State of Uttaranchal is strictly in accordance with Article 164(1-A), which permits 12 Ministers even if the 15% of the total number of members of the Legislative Assembly of that State is les than 12.

12. Mr. Ashok Aggarwal, the learned counsel for the petitioner could not demonstrate that, in fact, there are more than 12 Ministers in the State of Uttaranchal.

8. Mr. Ashok Aggarwal, the learned counsel for the petitioner, however, submitted that even if the number of Ministers in the State of Uttaranchal is not more than 12, the status of Minister has been

conferred on as many as 200 persons, which is in violation of the Constitutional mandate.

9. The learned counsel for the petitioner could not dispute that the persons on whom the status of Minister has been conferred were not administered oath like Ministers; they do not participate in the Cabinet Meetings; they do not exercise the power of Ministers; and they do not perform the duties of Ministers.

10. A bare reading of the above-quoted Article 164(1-A) of the Constitution of India clearly indicates that the restriction under Article 164(1-A) is only on the number of Ministers and not on the conferment of the status of a Minister on someone. As such, we do not find any violation of Article 164(1-A) of the Constitution of India.

11. In this view of the matter, the writ petition is liable to be dismissed and is hereby dismissed.

12. Consequently, CLMA No.8134 of 2005 also stands dismissed.

13. No order as to costs.

(Rajesh Tandon, J.) 23.09.2006

(Rajeev Gupta C.J.) 23.09.2006

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